

# TOWNSHIP OF MIDDLETOWN

## Zoning Board of Adjustment and Appeals

1 Kings Highway  
Middletown, NJ 07748-2594

**JAMES HINCKLEY**  
*Chairman*



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### TECHNICAL MEMORANDUM

DATE: December 20, 2021  
BOARD: Zoning Board of Adjustment and Appeals  
APPLICATION: Kenneth and Lauren Aravich (#2021-015)  
385 Highway 35  
Block 962, Lot 14  
Minor Site Plan; Use “d” Variance; and Bulk “c” Variances

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### PROJECT DESCRIPTION

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The applicant requires minor site plan, use “d” and bulk “c” variance approval to convert a portion (approximately 1,027 sq. ft.) of an existing 1,927 sq. ft. detached commercial garage to a medical office and maintain an existing single family detached dwelling in the Business (B-3) Zone. The single-family dwelling and medical office building are Principal Structures. Associated site improvements include expansion of the existing off-street parking lot, curbing, landscaping, and lighting. No improvements are proposed for the single-family dwelling.

The subject lot contains the following existing non-conforming conditions:

- Lot area (3 acres required, 0.4547 acres exists)
- Lot frontage (200 ft. required, 75.02 ft. exists)
- Minimum buildable lot area (2.5 acres required, 19,805 sq. ft.)
- Front-yard setback (house) 75 ft. required, 57 ft. exists
- Side-yard setback (house) 25 ft. required, 15.5 ft. and 23.8 ft. exists
- Side-yard setback (garage) 25 ft. required, 8 ft. and 23.4 ft. exists
- Street rear-yard setback (garage) 75 ft. required, 39.1 ft. exists
- Minimum first floor GFA (5,000 sq. ft. required, 2,662 sq. ft. exists); and
- Total GFA (5,000 sq. ft. required, 4,297 sq. ft. exists).

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## USE VARIANCE TESTIMONY

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1. “d1” Use Variance - The applicant proposes to convert a portion (approximately 1,027 sq. ft.) of an existing 1,927 sq. ft. detached commercial garage to a medical office and maintain an existing single family detached dwelling in the Business (B-3) Zone. Although the B-3 Zone permits medical office buildings, single-family dwellings are not permitted in the B-3 Zone, and therefore a variance pursuant to N.J.S.A 40:55D-70(d)(1) or a use “d” variance is required to keep the single-family dwelling.

Additionally, the application does not comply with the landscaped buffer standard that is required when non-residential uses abut a residential zone. As per Section 540-922C(1) a 75 ft. landscaped buffer is required along the perimeter of the subject lot that abuts a residential zone, and therefore variance relief pursuant to N.J.S.A 40:55D-70(c) is required, which is discussed further in this review.

The applicant shall address the following items related to the existing single-family dwelling:

- a) Describe the nature of the residential use in terms of number of bedrooms, square feet of gross floor area, parking, and point of access for tenants.

Positive Criteria - Testimony should address whether there are “special reasons” that substantiate the variance request. The Board should therefore consider all of the following:

- Does the proposal to maintain the single-family dwelling further the purposes of the Municipal Land Use Law (MLUL)? If so, which purposes are furthered, and how are they furthered?
- Is the existing single-family dwelling inherently beneficial?  
If not, is the site particularly suited to contain the single-family dwelling?

Negative Criteria – Testimony should confirm that the existing residential use will not create a substantial detriment to the public good or substantial impairment of the intent and purpose of the master plan, zone plan, and the zoning ordinance.

Master Plan/Zoning Ordinance Review – The Land Use Element of the Master Plan acknowledges that the Business (B-3) Zone provides for varying degrees of commercial uses and development intensities. The Board should determine the degree to which maintaining a single-family residential use in the B-3 Zone will impact the purpose and intent of the Master Plan and Zoning Ordinance.

Negative Impacts –

- Adjacent Uses: The applicant shall address any potential negative impacts that the proposal might have on adjacent residential uses in terms increase in traffic, adequacy of parking, etc.
- Landscape Buffer: The rear of the subject property on either side is adjacent to conforming residential uses in the Residential (R-10) Zone and requires a 75 ft. wide landscaped buffer. The applicant is proposing a 6’ high solid PVC fence along the east side of the property (adjacent to Lot 16) and a row of 5 ft. – 6 ft. arborvitae along the west side (adjacent to Lot 12).
- Off-street parking: The single-family residential dwelling requires 2 parking stalls, and the medical office requires 7 stalls (1 stall per 150 GFA), and there are 9 parking stalls provided

on-site. How will the parking stalls be shared among the residential use and patient parking? Signage proposed?

- Business signage: The applicant shall discuss the proposed signage, including freestanding and building-mounted, in terms of height, size, style, illumination, and overall conformance with 540-922C(2) and 540-635. Sign details shall be provided for review.
- Lighting: House-side shields shall be required on all existing and proposed light fixtures to avoid spillage onto adjacent properties. The applicant shall address in testimony the provision of security lighting where tenants will enter/exit the building, and overall conformance with 16-623 and 16-627H.
- Solid waste: The applicant shall indicate in testimony how trash and recycling will be handled for the business and residential use. No enclosed refuse area is proposed. Conformance with 540-516 for the residential use shall be required. Will there be chemicals or hazardous material disposed of off-site, and if so how will they be handled?

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## **BULK VARIANCE TESTIMONY**

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The applicant requires bulk variance relief for noncompliance with the landscape buffer standard and number of principal buildings permitted on one lot.

*Landscape Buffer* – Both sides of the rear of the subject property is adjacent to conforming residential uses in the Residential (R-10) Zone, and requires a 75 ft. wide landscape buffer as per Section 540-922C(1). In the absence of providing a 75’ wide landscape buffer, the applicant is proposing a 6’ high solid PVC fence along the east side of the property (adjacent to Lot 16) and a row of 5 ft. – 6 ft. arborvitae along the west side (adjacent to Lot 12).

*Number of Principal Buildings Permitted* – As per Section 540-509 any lot utilized for single-family or two-family dwelling purposes shall not contain more than one principal building. The applicant is proposing two principal buildings on the subject lot including a single-family dwelling, and medical office building.

Based on the Municipal Land Use Law standard for granting bulk relief (see below), the applicant shall indicate to the Board whether a “hardship” variance or “flexible C” variance will be sought for the bulk “c” variances cited above, and provide testimony supporting the chosen approach.

1. Physical Characteristics - N.J.S.A. 40:55D-70.C(1) (a/k/a Hardship Variance) – Testimony should indicate if strict application of the Zoning Ordinance requirements would result in peculiar and exceptional difficulties, or exceptional and undue hardship, to the applicant.
  - By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
  - By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property;
  - By reason of an extraordinary or exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
2. Benefits Outweighing Detriments - N.J.S.A. 40:55D-70.C(2) (a/k/a Flexible C Variance)

The applicant may also establish, in the absence of proving “hardship,” whether the granting of a variance will further the purposes of the Municipal Land Use Law, and if the benefits of granting the variance will substantially outweigh any detriment.

**Negative Criteria** - Additionally, with any type of C variance, testimony should confirm that noncompliance with the buffer standard and number of principal buildings on one lot will not create a substantial detriment to the public good or substantial impairment of the intent and purpose of the Master Plan and the Zoning Ordinance.

Additionally, the applicant shall indicate in testimony the nature of the proposed medical office use in terms of services rendered, number of employees, hours of operation, number of rooms, and frequency of appointments.

A colored rendering of the proposed medical office building shall be provided to the Board for their review.

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## **DESIGN WAIVERS**

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The applicant shall address conformance with the comments below or design waivers shall be requested:

1. Sidewalk is required in all parking areas for 5 or more vehicles, between parking areas and principal structures, along aisles and driveways where none is provided (540-603F and 540-627E). A design waiver is required.
2. As per 540-612C, the minimum driveway width shall be 24’ where at its narrowest is 10’ wide from Walnut Avenue and 22’ from Route 35. A design waiver is required.
3. The proposed location of the driveway (from Route 35) is 2.5 ft. and the driveway from Walnut Avenue is 19’ from the side property line where 20’ is the minimum required (540-612E). A design waiver is required.
4. Testimony is required to identify the proposed driveway access to the single-family dwelling to determine compliance with 540-612J-K regulating access drives for single-family uses.
5. Calculation shall be provided on the plans to show that a minimum 15% of the site plan is reserved for landscaping in conformance with 540-622A(2).
6. The applicant shall show conformance with 540-622D for landscaping of parking lots that contain 5 or more spaces, or seek design waivers.
7. A watering schedule for all landscaped areas shall be provided in the plans.
8. The applicant shall address in testimony conformance with lighting standards in Section 540-623 for parking lots with 5 or more spaces, or seek a design waiver.
9. As per 540-627B parking areas for nonresidential uses shall not be located within 50’ of a residential zone. The proposed parking area is 0’ and 6’ from a residential zone. A design waiver is required.

10. As per 540-627B(6) parking shall not be closer than 20 feet from any street line, and parking is proposed 5' from Walnut Avenue. A design waiver is required.
11. As per 540-627F curbing is required for the perimeter of all parking areas and none is proposed. A design waiver is required.
12. As per 540-627P(2) for the design of the parking area, a ten foot unbroken landscape strip along side and rear property lines is required and none is proposed. A design waiver is required.
13. Sidewalk is required on Route 35 and Walnut Avenue. None is proposed and a design waiver is required. A contribution in lieu of providing sidewalk will be required as per 540-634.
14. The exterior perimeter of the non-residential building shall include a landscaped strip at least 4' wide where none is proposed. A design waiver is required.
15. Off-street parking stalls shall not be located between the principal structure and street, where there are 5 parking stalls located between the non-residential building and Walnut Avenue (540-627B);
16. No parking shall be located within 20' of the outer walls of a building where 4' is proposed for the row of stalls located at the front of the medical office, and 18' is proposed for the stalls located at the rear of the medical office building. (540-627K).
17. One street tree shall be provided along the site's frontage per Section 540-645 where none are proposed. A design waiver is required.

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#### **MISCELLANEOUS COMMENTS**

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1. Plans shall be revised to show a sewer and water connection to the house.
2. Street address assignment for the residential and non-residential use will be required.
3. Approval or waiver from the following agencies will be required.
  - NJDOT
  - Freehold Soil Conservation District
  - TOMSA
  - Middletown Fire Advisory Review Board

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## PROPERTY DESCRIPTION, ZONING AND SURROUNDING LAND USES

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The subject property is 0.4547 square feet, and maintains 75 ft. of frontage on Highway 35 and 75 ft. of frontage on Walnut Avenue. The property contains a 2 story single-family dwelling, and a detached 1,927 sq. ft. garage. Existing driveway access to the site is from both Highway 35 and Walnut Avenue.

The subject property is located in the Business (B-3) Zone. Existing commercial uses flank the subject site on Highway 35. Single-family residential uses in the Residential (R-10) Zone flank the rear of the site on Walnut Avenue.

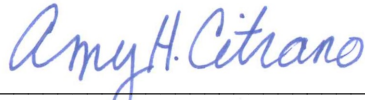
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## DOCUMENTS REVIEWED

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- Minor Site Plan, consisting of four sheets, prepared by East Point Engineering, LLC, dated March 26, 2021;
- Proposed Interior Partitions for Garage to Office Conversion for 385 Route 35, consisting of two sheets, prepared by M3 Architecture LLC, dated May 26, 2021;
- Application for Development Permit;
- Zoning Officer Denial Letter;
- Certification of property taxes; and
- Deed for subject property.

Prepared by:



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Amy H. Citrano, P.P., A.I.C.P.  
Director of Planning

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**LOCATION MAP**

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